

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7500

Petition of New England Power Company, d/b/a)
National Grid, for a Certificate of Public Good,)
pursuant to 30 V.S.A. Section 248, authorizing the)
G-33 Transmission Line Refurbishment Project in)
the towns of Rockingham, Westminster, Putney,)
Dummerston and Brattleboro, Vermont)

Order entered: 9/2/2009

ORDER RE MOTION TO RECONSIDER

I. INTRODUCTION

On August 7, 2009, Nathaniel Hendricks filed a motion requesting that the Vermont Public Service Board ("Board") reconsider the denial by the Hearing Officer of his June 18, 2009, intervention request. In this Order, we affirm the Hearing Officer's decision.

II. PROCEDURAL HISTORY

On March 16, 2009, New England Power Company, d/b/a National Grid ("NEP"), filed a petition, pursuant to 30 V.S.A. § 248, requesting Board approval for the reconstruction of the G-33 transmission line in the towns of Rockingham, Westminster, Putney, Dummerston and Brattleboro, Vermont.

On June 11, 2009, the Board conducted a public hearing in Bellows Falls, Vermont.

On June 18, 2009, Mr. Hendricks filed a motion to intervene in this docket, pursuant to Board Rule 2.209(A) and (B). In his motion, Mr. Hendricks indicated that he holds significant land over which the G-33 transmission line passes and the proposed project will have an undue adverse effect on soil and groundwater and bring economic harm to his property. Mr. Hendricks asserted that he is not adequately represented by the existing parties. Mr. Hendricks' motion also

raised environmental and sanitation claims with regard to National Grid's past operation of the right-of-way containing the G-33 transmission line.

On June 25, 2009, NEP filed a response opposing Mr. Hendricks' motion to intervene. On June 25, 2009, the Department of Public Service ("Department") filed a response concurring with NEP and opposing Mr. Hendricks' motion to intervene. On July 2, 2009, Mr. Hendricks filed a reply to NEP's response to his motion to intervene. On July 7, 2009, NEP filed a response to Mr. Hendricks' reply, continuing to oppose Mr. Hendricks' motion to intervene.

A July 10, 2009, Order issued by the Hearing Officer denied Mr. Hendricks' motion to intervene, concluding that: (1) Mr. Hendricks has not demonstrated a substantial interest in the proceeding that will not be adequately protected by other parties; (2) based on Mr. Hendricks description of his interests, there would appear to be alternate forums in which he could appropriately seek to protect those interests; and (3) it appears that Mr. Hendricks' intervention will unduly delay the proceeding.

On July 22, 2009, the Board conducted a second public hearing in Bellows Falls, Vermont.

III. MOTION TO RECONSIDER

On August 7, 2009, Mr. Hendricks filed a motion to reconsider the Hearing Officer's July 10 Order denying him intervention. Although the motion is not entirely clear on this point, we understand the motion to seek interlocutory Board review of the Hearing Officer's decision.

Mr. Hendricks requests that the Board accept his untimely motion given that as a *pro se* litigant he is unfamiliar with Board rules and that he had voiced his objections in a July 22, 2009, public hearing.¹

In his motion to reconsider, Mr. Hendricks repeats his contention that the proposed project will have an undue adverse effect on soil and groundwater and requests environmental

1. Under Rule 2.206, the Board may decline to consider a motion not made within a reasonable time after the issue first arises with respect to the moving party. In today's Order, the Board is not addressing whether Mr. Hendricks has filed a timely motion.

remediation for his property. Mr. Hendricks asserts that he is not adequately represented by the existing parties.

On August 21, 2009, NEP filed a response opposing Mr. Hendricks' motion to reconsider. NEP states that the interests raised by Mr. Hendricks are in the nature of potential civil claims against NEP that are unrelated to this proceeding and can be adequately addressed in other forums. As such, NEP argues that Mr. Hendricks has failed to identify a substantial interest that may be affected by the outcome of this proceeding. Moreover, NEP contends that, to the extent that the interests identified by Mr. Hendricks in his motion do relate to this proceeding, these generalized interests will be adequately protected by the Department and the Agency of Natural Resources ("ANR"). Finally, NEP states that Mr. Hendricks' intervention is likely to cause undue delay in the proceeding.

IV. DISCUSSION AND CONCLUSIONS

Board Rule 2.209(B) provides that:

a person may, in the discretion of the Board, be permitted to intervene in any proceeding when the applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding. In exercising its discretion in this paragraph, the Board shall consider (1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

We conclude that Mr. Hendricks' motion to intervene and motion to reconsider fail to satisfy the criteria for permissive intervention under Rule 2.209(B). In his June 18, July 2, and August 7 filings, Mr. Hendricks argues that the proposed project will have undue adverse effects on soil and groundwater and bring associated economic harm to his property, and that existing parties have not or will not represent his interests. Mr. Hendricks asserts that environmental remediation should be addressed in this proceeding and that the Board has required environmental remediation in past proceedings.² Mr. Hendricks offers no arguments that

2. Mr. Hendricks cites Docket 7448, Order of 09/18/08 and Docket 7382, Order of 12/08/08.

demonstrate a sufficient basis to justify permissive intervention. While Mr. Hendricks arguably may have met criterion (1) of Rule 2.209(B), that alone is insufficient given Mr. Hendricks' failure to demonstrate that criteria (2) and (3) have been satisfied.

In Board proceedings cited by Mr. Hendricks, the environmental remediation was addressed by ANR and the parties came to a stipulated agreement that was an element of the construction of the projects. In Docket 7382, the environmental remediation was part of the proposed decommissioning of a substation, and in Docket 7448, the environmental remediation was associated with the revitalization of two substations at a contaminated site. In both of these dockets, the environmental remediation was on utility property and was necessary to assure that the proposed construction activities were conducted in compliance with ANR regulations. Neither docket is analogous to the remediation issues that Mr. Hendricks seeks to pursue in the current proceeding.

In addition, Mr. Hendricks fails to demonstrate that there are no alternative means to protect his interests. Based on Mr. Hendricks' description of his concerns with regard to past environmental contamination and historical right-of-way management practices by NEP, there would appear to be alternate forums in which he could appropriately seek to protect those interests. Mr. Hendricks' claims of environmental contamination on his property and demands for remedial action are claims that are properly addressed in the civil courts. With regard to current management issues, Mr. Hendricks' concerns about herbicide use and other practices related to NEP's maintenance of the right-of-way are addressed by Board Rule 3.600, Maintenance of Electric Utility Rights of Way. Specifically, under Rule 3.641, a landowner whose property is traversed by a utility right-of-way may request in writing that the utility refrain from using herbicides in clearing the right-of-way.

Finally, Mr. Hendricks' motion to reconsider fails to address the Hearing Officer's conclusion that his intervention will unduly delay the proceeding. The July 10 order stated that Mr. Hendricks' intervention in this proceeding is likely to cause undue delay in the proceeding, citing the Vermont Supreme Court's decision in In re Putney Paper Co.³ Mr. Hendricks' motion

3. In re Putney Paper Co., 168 Vt. 608, 611 (1998); NEP Letter to the Board, June 25, 2009.

to reconsider fails to address this issue, and thus offers insufficient reasons to justify overturning the Hearing Officer's determination. While we are not endorsing the Hearing Officer's conclusions that Mr. Hendricks failed to satisfy criteria (1) of Rule 2.209(B), for the reasons stated above we conclude that he has failed to demonstrate that criteria (2) and (3) are satisfied.

The Board has granted individual landowners permissive intervention in other proceedings. In granting those intervention requests, individual landowners had demonstrated a substantial interest that may be affected by the outcome of the proceeding.⁴ In this case, Mr. Hendricks has not demonstrated a substantial interest which may be affected by the outcome of this proceeding.

Therefore, we affirm the Hearing Officer's decision to deny Mr. Hendricks' motion to intervene.

SO ORDERED.

4. *See, e.g.* Docket 6860, Order of 10/17/03.

Dated at Montpelier, Vermont, this 2nd day of September, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: September 2, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.